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PSI Corporation

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND BRANCH

PSI CORPORATION (f/k/a FRIENDLYWAY CORPORATION, f/k/a BIOFARM, INC.),

Case No. C 07-02869 SBA

Plaintiff,  
vs.

ALEXANDER VON WELCZEK, HENRY  
LO, MICHAEL DRAPER, and  
FRIENDLYWAY AG.

**PSI CORPORATION'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
DEFENDANTS VON WELCZECK'S  
AND LO'S CROSS-COMPLAINT**

## JURY TRIAL DEMANDED

Date : September 11, 2007  
Time : 1:00 p.m.  
Dept. : Courtroom 3, Third Floor

FRIENDLYWAY, INC., KARL  
JOHANNSMEIER, PACIFIC CAPSOURCE,  
INC., and DERMA PLUS, INC.,

## Nominal Defendants.

**PLEASE TAKE NOTICE** that on September 11, 2007, at 1:00 p.m. in Courtroom 3,  
Third Floor, United States District Courthouse, Oakland Division, 1301 Clay Street, Suite

1 400 South, Oakland, California 94612-5212, Plaintiff PSI Corporation (f/k/a Friendlyway  
2 Corporation, f/k/a Biofarm, Inc.) will move this Court for an Order pursuant to Federal  
3 Rule of Civil Procedure 12(b)(6) dismissing Counts Two, Three and Four of Defendants  
4 Alexander von Welczeck's and Henry Lo's Cross-Complaint [Docket No. 28]. The grounds  
5 for the Motion to Dismiss<sup>1</sup> are:  
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8 1. Count Two of the Cross-Complaint fails to state a claim on which relief can be  
9 granted because the pleadings and the written contracts upon which Count Two is  
10 expressly based demonstrate that Count Two is time-barred by the 2 year contractual  
11 limitations period appearing on the Share Exchange Agreement;  
12  
13

14 2. Count Three of the Cross-Complaint fails to state a claim on which relief can  
15 be granted for four principal reasons. First, Count Three is a logical nullity, for it accuses  
16 PSI of failing to assume a liability that was already PSI's. Second, Count Three asserts a  
17 breach of the April 2006 merger agreement between PSI and a third-party, but that written,  
18 integrated agreement does not express the agreement PSI allegedly breached, and  
19 Defendants were not parties to that agreement. Third, Count Three asserts a breach of an  
20  
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22 <sup>1</sup> PSI will answer the allegations in Count One after resolution of this Motion to Dismiss so  
23 as to prevent "duplicative sets of pleadings" and to avoid "confusion over the proper scope  
24 of discovery during the motion's pendency." 5B Wright & Miller, FEDERAL PRACTICE AND  
25 PROCEDURE § 1346; *Godlewski v. Affiliated Computer Servs., Inc.*, 210 F.R.D. 571, 572 (E.D. Va.  
26 2002) (majority rule holds "that the filing of a motion that only addresses part of a  
27 complaint suspends the time to respond to the entire complaint, not just to the claims that  
are the subject of the motion"); *Batdorf v. Trans Union*, 2000 WL 635455, at \*5 (N.D. Cal. May  
8, 2000) (same).

1 agreement to pay the debt of another, but Defendants' pleading fails to aver an enforceable  
2 written agreement to satisfy the applicable Statute of Frauds. Finally, Count Three seeks to  
3 redress a wrong alleged committed against Defendant Welczeck's parents, not Defendants.  
4 Accordingly, Defendants lack standing to assert Count Three.

5 3. Count Four of the Cross-Complaint fails to state a claim upon which relief can  
6 be granted because where there is a written contract between the parties, California law  
7 does not recognize a separate or additional cause of action for unjust enrichment.  
8 Equitable, implied or quasi-contract claims are not recognized in California law where  
9 there exists a written contract between the parties covering the same subject matter.

10 13 The Motion to Dismiss will be based upon this Notice of Motion and Motion to  
11 Dismiss, the Request for Judicial Notice, the Memorandum of Points and Authorities, the  
12 Proposed Order of Court and upon such other additional arguments and evidence as may  
13 be presented at the time of hearing.

14 19 COZEN O'CONNOR

20 21 Dated: July 16, 2007

22 By: s/Daniel D. Harshman  
23 Daniel D. Harshman  
24 Attorneys for Plaintiff  
25 PSI Corporation

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